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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 126

INGRAM-DAY LUMBER COMPANY, PETITIONER

v.

SYDNEY C. MCLOUTH, REVIVED AGAINST THE AMERICAN LOAN & TRUST COMPANY, administrator of the estate of Sydney C. McLouth, deceased

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the District Court (R. 35) is reported in 6 F. (2d) 471. The opinion of the Circuit Court of Appeals (R. 74) affirming the judgment of the District Court is reported in 13 F. (2d) 581.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 30, 1926. (R. 73.) Petition for certiorari was filed September 16, 1926, and

granted November 23, 1926 (R. 80), under the provisions of Section 240 (a), Judicial Code, as amended by the Act of February 13, 1925.

THE QUESTIONS PRESENTED

The United States Shipping Board Emergency Fleet Corporation cancelled a contract for the construction of vessels for it, as authorized by subdivision (b) of the Emergency Shipping Fund provisions of the Urgent Deficiencies Appropriation Act of June 15, 1917, c. 29, 40 Stat. 182; and directed the contractor to cancel all subcontracts, which he did. In this, an action by a subcontractor against the general contractor for breach of contract, the principal questions presented are:

1. Did the Emergency Fleet Corporation have power under the statute to cancel a subcontract to which it was not a party?

2. If the Emergency Fleet Corporation had such power, did cancellation of the subcontract by the general contractor pursuant to the directions of the Emergency Fleet Corporation amount to cancellation of the subcontract by the Emergency Fleet Corporation?

3. Upon such cancellation, is the subcontractor entitled to maintain against the general contractor an action for damages for breach of contract and recover in it for the loss of profits which might have been earned if the subcontract had been completely performed, or is his remedy against the

United States for just compensation for the value of the expropriated contract?

STATUTES AND EXECUTIVE ORDERS INVOLVED

The applicable portions of the Emergency Shipping Fund provisions of the Urgent Deficiencies Appropriation Act of June 15, 1917, c. 29, 40 Stat. 182–183, are as follows:

> The President is hereby authorized and empowered, within the limits of the amounts herein authorized—
>
> * * * * *
>
> (b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.
>
> * * * * *
>
> Whenever the United States shall cancel, modify, suspend or requisition any contract, make use of, assume, occupy, requisition, acquire or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner

> provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.
>
> The President may exercise the power and authority hereby vested in him, and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time * * *.
>
> * * * * *
>
> All authority granted to the President herein, or by him delegated, shall cease six months after a final treaty of peace is proclaimed between this Government and the German Empire.

The Emergency Shipping Fund provisions of the Act of June 15, 1917, were amended by the Act of April 22, 1918, c. 62, 40 Stat. 535, and the Act of November 4, 1918, c. 201, 40 Stat. 1020, 1022, in respects not material in the present case.

The Merchant Marine Act, 1920 (Act of June 5, 1920, c. 250, 41 Stat. 988), repealed the provisions quoted above, but Section 2 (b) (2) (U. S. C., Title 46, Sec. 862) provided that—

> All rights, interests, or remedies accruing or to accrue as a result * * * of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner * * * as if this Act had not been passed.

By Executive Orders dated July 11, 1917, and December 3, 1918, the President delegated to the

Emergency Fleet Corporation all power and authority vested in him by the Act of June 15, 1917, with reference to the construction of ships. These Executive Orders are set forth in the Appendix.

STATEMENT

This is an action for damages for breach of contract.

Under dates of August 21, 1918, and September 17, 1918, the Emergency Fleet Corporation entered into two contracts with Sydney C. McLouth, the respondent's intestate, under which McLouth agreed to construct for the Emergency Fleet Corporation certain ocean-going tugs for a lump-sum price of $232,000 each. (R. 51–52.) On February 5, 1919, McLouth entered into a contract with the petitioner by which the petitioner agreed to manufacture and deliver to McLouth, and McLouth agreed to purchase, certain lumber cut in special sizes and shapes, not suitable for petitioner's regular trade. (R. 5–14, 41–46, 48, 50–51.) This contract stated that the lumber was "required to complete four tugs." (R. 5.) The District Court found with respect to the making of this contract (R. 36):

> That at the time plaintiff's contract was entered into with McLouth the plaintiff knew that the lumber was to be furnished for the building of tugs, but did not know that McLouth had a contract with the Fleet Corporation, or that the tugs were being built for the Fleet Corporation.

There is no direct statement or finding that McLouth intended this material for the tugs being constructed for the Fleet Corporation, but that is the necessary inference from the record.

In April, 1919, the Emergency Fleet Corporation directed McLouth to suspend all work on the contracts for the construction of the tugs and to order all work stopped on commitments made by him. (R. 52–54.) This was the method usually employed by the Emergency Fleet Corporation in cancelling such contracts. (R. 53.) McLouth's agent promptly notified the petitioner that the tug contracts had been cancelled and instructed it to stop further shipments. (R. 47–48.) All lumber delivered by petitioner prior to its receipt of this notice had been paid for by McLouth, but in addition to the lumber delivered, petitioner at that time had partially manufactured other lumber for delivery under its contract with McLouth. (R. 47.)

I. C. Wilson, the assistant secretary and sales manager of the petitioner, testified that following receipt by the petitioner from McLouth of notice that the tug contracts had been cancelled and instructions to stop further shipments, an interview between Wilson and McLouth's agent took place, at which interview Wilson proposed that petitioner would accept cancellation of the contract provided it was paid for its losses, including the loss of anticipated profits on that part of the contract which was unperformed; that this offer was not accepted; that

thereafter the Emergency Fleet Corporation requested the petitioner to furnish a statement of its actual expenses incurred under the contract, which the petitioner refused to do, insisting upon its right to anticipated profits; that an effort was made to secure a reinstatement of McLouth's contracts with the Emergency Fleet Corporation, which effort failed; that after receipt of the instructions to stop further shipments no lumber was manufactured for delivery under the contract between the petitioner and McLouth; and that after *final cancellation* of the contract the lumber then on hand and partially manufactured was remanufactured into sizes and dimensions suitable for sale in the petitioner's regular trade and was sold in the ordinary course of its business. (R. 48.)

On September 17, 1919, the Emergency Fleet Corporation wrote McLouth, referring to the contracts with him and their previous suspension and then stating (R. 55):

> It has been decided that no further work will be done on these boats; therefore we are issuing definite cancellation order:
>
> By direction of the board of trustees your contracts 457 and 457 Sup. are hereby cancelled as to hulls Nos. 2415 to 2418 inclusive and hulls Nos. 2716 to 2720 inclusive; and you are hereby directed to notify all subcontractors affected by this cancellation.

This was evidently the "final cancellation" referred to in Mr. Wilson's testimony.

Petitioner brought suit against McLouth in the United States District Court for the Eastern District of Michigan for the alleged breach of its contract with him. (R. 1–14.) After the suit was commenced McLouth died, and the suit was revived against the American Loan & Trust Company, his administrator. (R. 16–22.) Trial by jury was waived and the parties stipulated that the issues of fact might be tried and determined by the court. (R. 23.) The respondent first pleaded the general issue (R. 14–15), but later sought permission to file an amended plea setting forth the contracts between the Fleet Corporation and McLouth, and the facts in connection with the cancellation of these contracts and of the contract between McLouth and the petitioner (R. 28–34). The court permitted the amended plea to be filed over the petitioner's objection. (R. 36.) The court found (R. 36):

> That if plaintiff's lost profits constitute a proper element of damage, that plaintiff's total damages amount to the sum of forty-two thousand seven hundred and eighty-nine dollars and ninety-six cents.
>
> That if plaintiff's lost profits under the contract are not an element of damage, that the plaintiff is entitled to the sum of six hundred and forty-seven dollars and sixty-five cents, with interest from the date of the suspension of the contract.

The court held that the petitioner's lost profits were not recoverable and rendered judgment for

the petitioner for six hundred and forty-seven dollars and sixty-five cents. (R. 36–39.) The case was taken to the Circuit Court of Appeals by petitioner by writ of error, and the Circuit Court of Appeals affirmed the judgment of the District Court. (R. 73.)

Neither party questions that $647.65 represents the petitioner's actual damage, exclusive of lost profits; the only question in the case is whether the petitioner is entitled to recover an additional amount representing the anticipated profits which it might have made if its contract with McLouth had not been cancelled.

SUMMARY OF ARGUMENT

The Emergency Fleet Corporation had power under the Act of June 15, 1917, and delegation of authority by the President, to cancel the contract between the petitioner and McLouth. The Act is applicable to all contracts, whether private or governmental. *Russell Co.* v. *United States*, 261 U. S. 514.

The Emergency Fleet Corporation exercised this power and cancelled the contract. No particular formality is necessary to effect a cancellation. The Emergency Fleet Corporation intended that the contract should be cancelled and McLouth and the petitioner were notified of this intention. This was sufficient to effect a cancellation.

Upon such cancellation the petitioner was not entitled to recover from McLouth damages for his

failure to complete performance. The contract was at an end, and neither party was entitled to require further performance thereof by the other or to recover damages from the other for failure to perform further.

Such a cancellation amounted to an expropriation of the contract and the petitioner's remedy was against the United States for just compensation, the measure of which is the value of the contract at date of cancellation, which may be affected by the prospect of profit, but which does not include prospective profits.

Other questions argued by the petitioner present no ground for reversal of the judgment below.

ARGUMENT

I

THE EMERGENCY FLEET CORPORATION HAD POWER TO CANCEL THE CONTRACT BETWEEN THE PETITIONER AND M'LOUTH

That the Emergency Fleet Corporation had power under the Act of June 15, 1917, to cancel the contract between the petitioner and McLouth is clear under the decision of this Court in *Russell Co.* v. *United States*, 261 U. S. 514. The contention in that case was that power to cancel contracts under subdivision (b) of the Emergency Shipping Fund provisions of the Urgent Deficiencies Appropriation Act of June 15, 1917, was restricted to private contracts and did not apply to contracts to

which the United States was a party. The Court said (page 519):

> It must be apparent, we think, that the words of the provision, "*any* existing or future contract," read with literal exactness, include all contracts, whether private or governmental. But it is pointed out that the power to "requisition" can not apply to a governmental contract; and this may be conceded, since the Government can not requisition what it already has. Then it is said that inasmuch as the application of the word "requisition" must be confined to private contracts, the other words associated with it must be likewise restricted by virtue of the maxim *Noscitur a sociis*.

On pages 520–521 the Court disposed of this contention as follows:

> But here the meaning of the words considered severally is not in doubt, and the rule is invoked not to remove an obscurity but to import one. There is nothing in the rule or in the statute which requires us to assimilate the words "modify" and "cancel" to the scope of the word "requisition," simply because the latter has a necessarily narrower application. The meaning of the several words, standing apart, being perfectly plain, what should be done is to apply them distributively, *diverso intuitu*, giving to each its natural value and appropriate scope when read in connection with the object (any contract) which they are severally meant to control. Thus, the predicate "requisition" will

be limited to private contracts, while the other words may be appropriately extended to include governmental contracts as well.

The Court further said, on pages 521–522:

This disposition of the question also accords with the broad purposes of the legislation. When the act was passed we were in the midst of a great war, which called for the utilization of all our resources. The necessities were great, beyond the power of statement. The Government was confronted with the vital necessity not only of producing ships and supplies in unprecedented quantities, but of producing them with the utmost haste. Hence it was necessary that everything which stood in the way of or hindered such production should be put aside. But this was a necessity which Congress, of course, realized must sooner or later come to an end, suddenly and completely. With the termination of the war the continued production of war supplies would become not only unnecessary but wasteful. Not to provide, therefore, for the cessation of this production when the need for it had passed would have been a distinct neglect of the public interest. The situation, it is plain, required that production should proceed while the war lasted to the utmost limit of the Nation's power, but that it should come to an end as soon as possible upon the passing of the emergency. In the light of these circumstances it is not unreasonable to regard the statute now under considera-

> tion as intended to accomplish both results, that is: (1) to enable the President, during the emergency, to utilize his powers over contracts to stimulate production to the utmost, and then, (2) upon the passing of the emergency, to enable him to utilize these same powers to stop that production as quickly as possible.

The holding of the Court in the *Russell case*, therefore, is that the President, or his authorized agent, had power under the statute to cancel *any* contract, public or private, (1) during the emergency, to stimulate production to the utmost, and (2) upon the passing of the emergency, to stop that production as quickly as possible.

It follows that when it appeared that the vessels which McLouth had contracted to build for the Emergency Fleet Corporation were no longer required, the Emergency Fleet Corporation had power to cancel not only the contract between it and McLouth but all contracts made by McLouth for materials to be used in the construction of such vessels. The purpose of Congress to permit production to be stopped as quickly as possible upon the passing of the emergency would be to a large extent defeated if the statute should be construed as applicable only to general contracts for finished articles and not to the contracts entered into by the general contractor with subcontractors or materialmen for materials and labor for use in making the finished articles.

The present suit is clearly an attempt to obtain from the United States indirectly an amount which the petitioner could not have obtained directly. This was recognized by the Circuit Court of Appeals when it said, referring to the Act of June 15, 1917, and similar acts (R. 78):

> They were passed to meet the exigencies of war, and because of the impossibility of knowing when the war would end, Congress wisely provided for the cancellation of these contracts to prevent the needless expenditures of public funds, and the waste of material in the construction of ships and tugs no longer needed by the government for war purposes or for any other purpose. Just compensation would necessarily include any damages the principal contractor would be compelled to pay upon any contracts or commitments for material or labor. If sub-contractors are entitled to damages for breach of contract based upon the profits they would earn if these contracts were completed, the benefits of the provision of this Act, in reference to just compensation, would be substantially, if not wholly, lost to the government.

The present case is similar to *Todd Dry Dock & Construction Corporation* v. *Sumner Iron Works* (C. C. A., 9th Circuit), 289 Fed. 217; certiorari denied, 263 U. S. 700. In that case it appeared that the Emergency Fleet Corporation had entered into a contract with the Todd Corporation for the

construction of certain vessels, and the Todd Corporation had entered into a contract with the Sumner Iron Works to furnish certain materials for the vessels. The Fleet Corporation cancelled the contract with the Todd Corporation and directed the Todd Corporation to notify all subcontractors affected by the cancellation. Notice of cancellation was duly given by the Todd Corporation to the Sumner Iron Works. The Sumner Iron Works thereafter sued the Todd Corporation to recover damages for the breach of the subcontract. The only question was whether the Sumner Iron Works could recover for anticipated profits, since it had already received more than the amount of all of its other claims. The Court held that there could be no recovery. After referring to the Act of June 15, 1917, it said (pages 219–220):

> The duration of the war and the necessities of the government were both uncertain, and it was the part of prudence on the part of Congress to provide for the cancellation of all contracts imposing future obligations upon the government as soon as public safety and public necessity would permit. The act should receive a liberal construction to that end, and the construction placed upon it by the department charged with its execution is of great weight. The authority to suspend or cancel extended, in our opinion, not only to the principal contract, but to all subcontracts for material and labor, the per-

formance of which would impose further obligations upon the government.

We are not now directly concerned with the claim of the Todd Corporation against the Fleet Corporation or against the United States; but, if the present judgment is permitted to stand, how can the amount of the judgment be excluded from the just compensation to which the Todd Corporation is entitled as against the government? It is said that the Todd Corporation should have provided against such a contingency by contract, and, had it done so, the contract price would have been much higher. But the reservation of rights conferred by law is wholly unnecessary. The contract was canceled, not by the Todd Corporation, but by the authorized representative of the President of the United States, and the Todd Corporation was under no obligation to warn the defendant in error that that authority might be exercised at any time. The principal contract itself contained no such reservation. Doubtless the Fleet Corporation deemed the authority reserved by law ample for its protection. That authority is read into every contract, and is notice to all, and is binding upon all.

The case of *American Chain Co.* v. *Interstate Iron & Steel Co.* (C. C. A., 7th Circuit), 291 Fed. 1006; certiorari denied, 263 U. S. 709, to which the petitioner refers as governing the present case, is not in point. The court held only that no governmental agency "ever requisitioned or modified or

canceiled this contract in suit, or ever directed or required buyer to modify or cancel this contract," and that under such circumstances the buyer was not entitled to escape liability on a contract for material on the ground that some portion thereof might have been for use in the performance of a contract between it and the Emergency Fleet Corporation which had been canceled.

The petitioner's case rests principally on the contention that because petitioner did not know, when he made the contract, that he was furnishing material for Government tugs, his contract is not subject to cancellation under the Act of June 15, 1917. This argument seems to be based on statements made in *Russell Co.* v. *United States*, 261 U. S. 514, 524. In that case, as in this, the canceled contract had been entered into subsequent to the passage of the Act of June 15, 1917, and it was said that the statute should be read into and formed a part of the contract and that cancellation was contemplated when the contract was made. The argument of petitioner is that such a theory may not be applied here, since he made his contract without knowledge that he was furnishing material for performance of a Government contract.

The Act of June 15, 1917, is not limited in its application to contracts entered into after its passage. In respect of contracts made prior to its passage, cancellation is an exercise of the power of

eminent domain, and cancellation of a contract made after the passage of the Act may be rested on an exercise of that power. If the measure of compensation for cancellation fixed by the statute were different from the compensation required by the Constitution to be paid for property taken for public use, some importance would have to be given to whether the cancelled contract was entered into before or after the passage of the Act, and whether the right of cancellation was in effect a stipulation of the contract, entered into in contemplation of cancellation; but the just compensation required by the statute to be paid is the same compensation that is required to be paid under the Constitution. Congress did not intend a different rule of compensation for cancellation, under the power of eminent domain, of contracts entered into prior to the passage of the statute, than for cancellation of contracts entered into after the enactment of the statute in contemplation of the power of cancellation. The result is that it is quite immaterial whether any contractor whose contract was cancelled knew that he was furnishing material to a general contractor for vessels for the United States. It is also immaterial whether he had a subcontract in the sense that his contract specified that the material to be furnished was for use in the performance of a general contract with the United States. If he were in ignorance of this, cancellation of his con-

tract may be attributed to an exercise of the power of eminent domain and need not be considered the exercise of a provision of the contract read into it by implication.

II

THE EMERGENCY FLEET CORPORATION CANCELLED THE CONTRACT BETWEEN THE PETITIONER AND M'LOUTH

If the Emergency Fleet Corporation had power under the Act of June 15, 1917, to cancel the contract between the petitioner and McLouth, there can be little doubt that this power was exercised. The statute prescribes no particular formality which is required in order to effect a cancellation. It is enough if the Emergency Fleet Corporation intended that the contract should be cancelled and if McLouth and the petitioner were notified of this intention. Cf. *Texas Co.* v. *Hogarth Shipping Co.*, 256 U. S. 619; *College Point Boat Corporation* v. *United States*, 267 U. S. 12.

It appears in the present case that the Emergency Fleet Corporation directed McLouth to suspend all work on his contracts and to order all work stopped on commitments made by him; that pursuant to such directions McLouth's agent ordered the petitioner to stop shipments; that thereafter the petitioner manufactured no further lumber for delivery under the contract; that the Emergency Fleet Corporation requested the petitioner to furnish a statement of its actual expenses incurred

under the contract, which the petitioner refused to do, insisting upon its right to anticipated profits; that an effort was made to secure a reinstatment of McLouth's contracts with the Emergency Fleet Corporation, which effort failed; that the Emergency Fleet Corporation sent McLouth a "definite cancellation order," cancelling his contracts with it and directing him to notify all subcontractors affected by the cancellation; and that thereafter the petitioner remanufactured into sizes and dimensions suitable for sale and sold in the ordinary course of its business the lumber then on hand and partially manufactured for delivery under the contract between McLouth and the petitioner. (R. 47–48, 53–55.)

Under these circumstances it is clear that the Emergency Fleet Corporation intended to cancel the contract between McLouth and the petitioner, and that the petitioner was notified of and fully understood this intention; that while the petitioner insisted that it was entitled to be paid for its loss of anticipated profits it never questioned that the attempted cancellation was the act of the Emergency Fleet Corporation. The testimony of the petitioner's own witness, Mr. Wilson, shows that it was fully informed concerning the situation. It follows that the contract between McLouth and the petitioner must be regarded as cancelled by the Emergency Fleet Corporation under the Act of June 15, 1917.

The result is the same if it be held that the contract between the petitioner and McLouth was not within the effect of the final "definite cancellation order" given by the Emergency Fleet Corporation to McLouth. The Emergency Fleet Corporation had previously directed McLouth to order all work stopped on commitments made by him and McLouth had notified the petitioner to this effect. The Act of June 15, 1917, authorized suspension as well as cancellation of contracts. If the contract between the petitioner and McLouth was never cancelled, it was certainly suspended, and this suspension was never removed. The petitioner's right to recover damages for nonperformance would be no better in the case of a contract thus suspended than in the case of a cancelled contract. Cf. *College Point Boat Corporation* v. *United States*, 267 U. S. 12.

III

THE CANCELLATION BY THE FLEET CORPORATION AMOUNTED TO AN EXPROPRIATION OF THE CONTRACT UNDER THE POWER OF EMINENT DOMAIN, AND THE PETITIONER'S REMEDY WAS AGAINST THE UNITED STATES FOR JUST COMPENSATION, AND NOT AGAINST THE RESPONDENT FOR BREACH OF CONTRACT

Upon cancellation by the Emergency Fleet Corporation of the contract between the petitioner and McLouth, the contract, in so far as it remained executory, was terminated and at an end, and

neither party was entitled to require further performance by the other or to recover damages from the other for failure to perform further. The contract was expropriated by the United States. *Brooks-Scanlon Corp.* v. *United States*, 265 U. S. 106, 121.

The compensation to be paid was owing from the United States, not from the respondent, and the petitioner was limited to asserting a claim against the United States, in the manner prescribed in the Act of June 15, 1917, for the just compensation therein provided for. It follows that such damage for breach of contract as has been allowed to the petitioner in this case is something it was not entitled to recover against the respondent. But it is immaterial now whether petitioner's remedy for compensation for the value of the contract expropriated was against the respondent or the United States. That compensation is measured by the value of the contract at the time of cancellation. While the prospect of profit may bear on the value of a contract, prospective profits, as such, are not part of the value, and are not part of the just compensation.

Russel Co. v. *United States*, 261 U. S. 514.

Duesenberg Motors Corp. v. *United States*, 260 U. S. 115.

College Point Boat Corporation v. *United States*, 267 U. S. 12.

IV

OTHER QUESTIONS ARGUED BY THE PETITIONER PRESENT NO GROUND FOR REVERSAL OF THE JUDGMENT BELOW

Petitioner says that the contract between it and McLouth was made February 5, 1919, nearly three months after the Armistice, and that for this reason the contract was not subject to cancellation by the Emergency Fleet Corporation. It is, of course, a complete answer to this contention that Congress provided that the authority granted to the President by the Act of June 15, 1917, or by him delegated, should cease six months "after a final treaty of peace is proclaimed between this Government and the German Empire," that such final treaty of peace was not proclaimed until November 14, 1921, and that such authority therefore continued until the Merchant Marine Act, 1920, repealed the provisions of the Act of June 15, 1917, by which it was conferred. The suggestion that authority to cancel a contract was in some way dependent upon whether the contract was made before or after the Armistice is no more than the petitioner's view as to what Congress should have provided, and bears no relation to what Congress actually did provide.

The other points made by petitioner do not need consideration.

The case is so clear on other grounds that it is not necessary to deal with the subject of frustration.

CONCLUSION

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.
GARDNER P. LLOYD,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel, United States Shipping Board Emergency Fleet Corporation.
I. V. MCPHERSON,
Assistant Counsel, United States Shipping Board Emergency Fleet Corporation.

DECEMBER, 1927.

APPENDIX

The Executive Orders by which the President delegated to the Emergency Fleet Corporation all power and authority vested in him by the Emergency Shipping Fund provisions of the Act of June 15, 1917, and amendments thereto, with reference to construction of vessels, are as follows:

The Executive Order of July 11, 1917

Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation

By virtue of authority vested in me in the section entitled "Emergency Shipping Fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether

on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein; and the operation, management, and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

WOODROW WILSON.

THE WHITE HOUSE,
11 July, 1917

The Executive Order of December 3, 1918

Delegating to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, powers granted to the President by Acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918

Whereas, by Executive Order No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas, since the issuance of said Executive Order, the said powers granted in said act have been variously affected or extended by the section entitled "Emergency shipping fund" of the Urgent Deficiency Appropriation Act approved October 6, 1917, by Public Act No. 138, Sixty-fifth Congress approved April 22, 1918, amending said section of said Act of June 15, 1917, and by the sections entitled "Emergency shipping fund" in the Sundry Civil Appropriation Act approved July 1, 1918, and in the First Deficiency Appropriation Act, 1919, approved November 4, 1918, respectively:

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said Order No. 2664, but in no way limiting

or restricting the effect thereof, or of acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways and piers, and to constructed vessels or parts thereof or charters therein; to the operation, management and disposition of such dry docks, marine railways, piers and vessels; and to such other matters as are not herein mentioned.

3. All acts heretofore done by said corporation or by said board, with reference respectively to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

WOODROW WILSON.

THE WHITE HOUSE,
3 December, 1918.

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